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CERTIFICATE OF MAILING

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: The Commissioner of Patents and Trademarks, Washington, D.C. 20231.

Regina D. McKinney (Type or Print Name) — Regina D. McKinney (Signature) — 10/25/02 (Date)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	:	
Atkinson *et al.*	:	Art Unit: 1634
Serial No. 10/054,225	:	Examiner: Arunk Chakrabarti
Filed: November 13, 2001	:	Atty Docket: SJ-01-0022
For: Diagnostic Assay for Antibiotic Tolerance	:	

RESPONSE TO RESTRICTION REQUIREMENT

Honorable Commissioner of
Patents and Trademarks
Washington, D.C. 20231

Sir:

In response to the Restriction Requirement dated October 15, 2002 issued for the referenced application applicants hereby elect claim group I, claims 1-12, with traverse for further prosecution.

According to the Restriction Requirement, the claims represent four separate inventions as follows:

I. Claims 1-12, drawn to a method of nucleic acid hybridization;

II. Claims 13-16, drawn to a kit containing nucleic acids , with dependent claims limited to the presence of nucleic acid primer pair SEQ ID Nos. 7 and 8 for detecting vex2 alleles;

III. Claims 13-16, drawn to a kit containing nucleic acids , with dependent claims limited to the presence of nucleic acid primer pair SEQ ID Nos. 9 and 10 for detecting pep27 alleles;

IV. Claims 13-16, drawn to a kit containing nucleic acids , with dependent claims limited to the presence of nucleic acid primer pair SEQ ID Nos. 11 and 12 for detecting vncS alleles.

Applicants respectfully traverse this restriction requirement and reserve the right to petition therefrom under 37 C.F.R. §1.144.

With respect to claim groups II-IV, the examiner cites MPEP §803.04 to support the separation of these claim groups according to the three different pairs of primer sequences which are included in the claims. However, MPEP §803.04 indicates that ten sequences constitute a reasonable number for examination in the same application, except for particularly complex cases. In the present application a total of six primer sequences of 20 nucleotides each are recited in the claims. Thus, rather than representing an exceptionally complex case as described in MPEP §803.04 which would necessitate restriction of less than ten sequences, the present application represents an exceptionally easy case for which restriction is unwarranted. Should this restriction be maintained, applicants respectfully request the examiner to explain the standard used to determine that examination of these six sequences in the same application

poses an undue examination burden, since the standard set forth in MPEP §803.04 clearly does not justify restriction in this case.

With respect to claim groups I and II-IV, the examiner correctly notes that the groups are related as product (kit claims 13-16; groups II-IV) and process of use (claims 1-12; group I). Restriction is justified according to the examiner because "the nucleic acids of Group II [and III-IV] can be used in the method of nucleic acid hybridization of Group I or can be used to make RNA and protein or antisense nucleic acid for gene therapy."

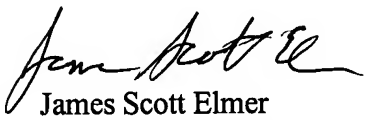
The claims of groups II-IV are drawn to a kit that is specifically designed to perform the methods of claim group I. It would not be possible to use the claimed kit to make RNA, protein or antisense nucleic acid for gene therapy as suggested by the examiner without additional components and processes which are not contemplated by the invention. Thus the basis for this restriction appears flawed.

Moreover, according to MPEP §803 the examiner should examine all claims in a single application without restriction if the search and examination can be made without serious burden. In the present case, simple and straightforward methods are claimed along with a kit for performing such methods. Given the relative simplicity of the claimed methods and their direct relationship with the claimed kit, applicants respectfully submit that the search and examination of such claims does not pose a serious burden on the examiner.

In accordance with the remarks above, applicants respectfully request that the Restriction Requirement be reconsidered and withdrawn to allow prosecution of all pending claims in the same application, or, in the alternative, modification of the Restriction Requirement to allow prosecution of more than one of the above groups.

No fee is believed to be required for consideration of this submission. If applicants are incorrect and a fee is required the Commissioner is hereby authorized to charge such fee to Deposit Account No. 501968.

Respectfully submitted,



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